

Message Text

CONFIDENTIAL

PAGE 01 SAN JO 01851 140229Z

61

ACTION ARA-10

INFO OCT-01 ISO-00 L-03 SS-15 SCA-01 INR-07 SP-02 /039 W

----- 055985

P 132125Z APR 76

FM AMEMBASSY SAN JOSE

TO SECSTATE WASHDC PRIORITY 3519

C O N F I D E N T I A L SAN JOSE 1851

STADIS//////////

E.O. 11652: GDS

TAGS: PFOR, PGOV, CS

SUBJECT: VESCO CASE: REQUEST TO HIRE LOCAL ATTORNEY

REF: (A) STATE 80063; (B) STATE 60707; (C) STATE 58366

1. BEGIN SUMMARY: EMBASSY STRONGLY ENDORSES PROPOSAL TO HIRE LOCAL LAWYER FOR FOUR-SIX WEEK PERIOD TO ADVISE ON SUBSTANTIVE AND PROCEDURAL QUESTIONS (LISTED IN THIS MESSAGE) HAVING TO DO WITH EXTRADITION. THREE EXTRADITION CASES SINCE PASSAGE OF 1974 WILL NSERIT SPECIAL ATTENTION. HOURLY LAWYER FEE IS IN \$80-85 RANGE. END SUMMARY.

2. EMBASSY STRONGLY ENDORSES CONCEPT OF HIRING A LOCAL LAWYER FOR FOUR-SIX WEEK PERIOD TO ADVISE EMBASSY AND DEPARTMENT ON MATTERS RELATING TO EXTRADITION. EMBASSY SUGGESTS MOREOVER THAT AT SOME POINT DURING THIS SPAN STATE OR JUSTICE CONSIDER ASSIGNING A LAWYER FOR A SHORT TDY TO WORK DIRECTLY WITH COSTA RICAN ATTORNEY AND EMBASSY TO INSURE THAT ALL FACETS OF QUESTIONS ARE ADEQUATELY ADDRESSED. SUGGEST THAT SCOPE OF WORK READ SIMPLY "TO ADVISE EMBASSY AND DEPARTMENT ON MATTERS RELATING TO EXTRADITION, INCLUDING RESEARCH AND WRITTEN RESPONSES TO SPECIFIC QUESTIONS RELEVANT TO THE U.S./COSTA RICAN EXTRADITION TREATY, THE CURRENT COSTA RICAN EXTRADITION LAW, OTHER COSTA RICAN LAWS AND PROCEDURES."

CONFIDENTIAL

CONFIDENTIAL

PAGE 02 SAN JO 01851 140229Z

3. THE KEY PROBLEM TO BE PRESENTED TO A LOCAL LAWYER,

OF COURSE, IS HOW THE 1974 "VESCO LAW" AND THE TREATY MAY INTERACT. THIS PROBLEM WOULD PRESUMABLY BEST BE APPROACHED BY ADDRESSING SPECIFIC SUBSIDIARY QUESTIONS TO THE LAWYER SUCH AS THOSE INCLUDED IN REFTEL (A) PLUS THE FOLLOWING DRAWN FROM STATE 060707 AND 58366.

A. WHETHER 18 USC 1343 IS LIKELY TO BE DETERMINED A FRAUD STATUTE IN COSTA RICA (STATE 53866, PARAGRAPH 4A).

B. THE "TERRITORY" VS. "JURISDICTION" QUESTION.
(STATE 58366, PARAGRAPHS 4B, 5A, AND 6B.)

C. THE WHOLE DOCUMENTATION QUESTION (STATE 58366, PARAGRAPH 4C AND 5C, 5E AND 6E) TO WHICH THE FIRST QUESTION IN REFTEL (A) IS PRESUMABLY RELATED IF NOT IDENTICAL.

D. WHETHER EXTRADITION CAN BE PRECLUDED FOR A CLEARLY COMMON OFFENSE IF THE EXTRADITEE CAN ARGUE THAT HE IS "WELL AND PUBLICLY KNOWN TO BE THE VICTIM OF PERSECUTION FOR POLITICAL MOTIVES"
(PARAGRAPHS 5B AND 6F OF STATE 58366).

E. WITH REFERENCE TO ARTICLE 2 OF THE VESCO LAW, THE QUESTION OF WHETHER THE POSSIBILITY OF A FINE UNDER THE LAW OF THE REQUESTING STATE PRECLUDES EXTRADITION (STATE 58366, PARAGRAPHS 5C AND 6C).

F. UNDER WHAT CONDITIONS (UNDER THE VESCO LAW) A PREVIOUS EXTRADITION REQUEST COULD PRECLUDE ANOTHER REQUEST (STATE 58366, PARAGRAPHS 5D AND 6D).

4. THE EMBASSY IS AWARE OF THREE EXTRADITION REQUESTS (THE FIRST TWO OF THEM SUCCESSFUL) SINCE THE PASSAGE OF THE 1974 LAW; THEY INVOLVE A PERUVIAN, A GERMAN, AND THE CHILEANS ANDRES PASCAL ALLENDE AND HIS FEMALE COMPANION. THE LATTER IS BEING APPEALED BY THE GOC AFTER A LOWER COURT REJECTION; THE CHILEAN REQUEST IS NOT EXPECTED TO PROSPER. HOW THESE CASES WERE ARGUED AND HOW THE LAW HAS BEEN INTERPRETED SHOULD BE CONFIDENTIAL

CONFIDENTIAL

PAGE 03 SAN JO 01851 140229Z

OF ASSISTANCE TO US; THEY MERIT CAREFUL STUDY BY OUR LAWYER.

5. ANOTHER KEY QUESTION IS WHETHER WE CAN CHALLENGE THE CONSTITUTIONALITY OF THE 1974 EXTRADITION LAW IN OUR ACTION, AND IF SO, WHEN TACTICALLY SHOULD WE TRY? ALTERNATIVELY, PERHAPS, AS SUGGESTED IN PARAGRAPH 2C OF REFTEL (A) THE BUSTAMANTE CODE MAY HELP US FEND OFF

THE LAW.

6. PROCEDURAL AND TACTICAL QUESTIONS: A MOST IMPORTANT AREA TO BE ADDRESSED IS HOW AND WHEN WE PRESENT OUR CASE, ONCE IT IS READY, TO ASSURE THE MOST FAVORABLE COURT RESPONSE. THIS ENTAILS CONSIDERATION OF THE COURT CALENDAR, ROTATION OF JUDGES WHO MIGHT BE MOST SYMPATHETIC TO OUR CASE, ETC. ANOTHER PART OF THIS PROCEDURAL QUESTION, OF COURSE, IS ROLE OF FOREIGN MINISTRY, INCLUDING MATTER OF TIME CONSTRAINT ON THE FOREIGN MINISTRY TO TRANSMIT OUR INITIAL REQUEST TO THE COURT (STATE 58366, PARAGRAPH 7).

7. COST ESTIMATES: EMBASSY UNDERSTANDS THAT PRINCIPAL LAWYERS WHO SERVICE MULTINATIONALS AND OTHER LARGE FOREIGN CLIENTS HAVE RECENTLY DECIDED TO INCREASE THEIR HOURLY FEES TO \$80-85/HOUR. IN OUR VIEW, AT LEAST FORTY HOURS OF CONSULTATION--\$4,000 WORTH--SHOULD BE CONTEMPLATED. FOR COMPARISON, EMBASSY UNDERSTANDS THAT MOST PRESTIGIOUS COSTA RICAN LAW FIRM THAT DEALS WITH MANY FOREIGN CLIENTS--FACIO, FOURNIER, & CANAS (THE FOREIGN MINISTER'S FIRM)--CHARGES \$125/HOUR. (DEPARTMENT WILL RECALL THAT VESCO USED THIS FIRM IN HIS EARLY DAYS IN COSTA RICA.)
LANE

CONFIDENTIAL

NNN

Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXTRADITION, ATTORNEYS
Control Number: n/a
Copy: SINGLE
Draft Date: 13 APR 1976
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: ShawDG
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1976SANJO01851
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: GS
Errors: N/A
Film Number: D760140-0786
From: SAN JOSE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1976/newtext/t19760467/aaaacewk.tel
Line Count: 140
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION ARA
Original Classification: CONFIDENTIAL
Original Handling Restrictions: STADIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: STADIS
Reference: 76 STATE 80063, 76 STATE 60707, 76 STATE 58366
Review Action: RELEASED, APPROVED
Review Authority: ShawDG
Review Comment: n/a
Review Content Flags:
Review Date: 27 OCT 2004
Review Event:
Review Exemptions: n/a
Review History: WITHDRAWN <15 JUL 2004 by coburnhl, PRIVACY>; RELEASED <27 OCT 2004 by ElyME>; APPROVED <04 NOV 2004 by ShawDG>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
04 MAY 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: VESCO CASE: REQUEST TO HIRE LOCAL ATTORNEY
TAGS: PFOR, PGOV, CS, (VESCO, ROBERT L)
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006